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GLEN R. HAGEN

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

GLEN R. HAGEN, Plaintiff, v. NCR CORPORATION, Defendant.	Case No.: 07 CV 2205 DMS (CAB) **AFFIDAVIT OF THOMAS R. GILL, ESQ., IN SUPPORT OF PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION TO EX PARTE APPLICATION TO CONTINUE EXPERT DESIGNATION AND RELATED DATES** **[FRCP 26(a)(2)(C)]** Judge: Hon. Cathy Ann Bencivengo Trial Date: May 9, 2009, 9:00 a.m.

I, THOMAS R. GILL, ESQ., have personal knowledge of the following facts, and if called upon could competently testify to the following:

1. Plaintiff has never designated an expert doctor, or identified any of Plaintiff's treating doctors as individuals who will testify at trial.

2. Months ago defense counsel informally inquired of the names of the doctors who treated Plaintiff. He was told.

3. Defense counsel then issued three document subpoenas, including one to Dr. Davidson.

4. Since then only Dr. Davidson has been deposed. Her deposition arose only after I asked defense counsel if Dr. Davidson could be present at Plaintiff's deposition to help assess

Plaintiff's ability to continue with his deposition. Defense counsel refused, contingent upon deposing Dr. Davidson for the purpose of determining whether her presence at Plaintiff's deposition would be necessary. This is the sole understanding of the reason for Dr. Davidson's deposition.

5. During the little more than one hour deposition of Dr. Davidson Mr. Scully announced he would not oppose Dr. Davidson being present at Plaintiff's deposition.

6. There was never an understanding there would not be expert witnesses. In fact, I told Mr. Scully in writing Dr. Davidson would not be Plaintiff's expert. (*See* below.)

7. In an email dated May 12, 2008, from myself to Mr. Scully, wherein arrangements were being discussed for taking Dr. Davidson's deposition, I disclosed to Mr. Scully that: "Dr. Davidson will not be Plaintiff's expert." The implication, of course, is some other doctor will be Plaintiff's expert. At no time did Mr. Scully express any concern, surprise, or misunderstanding about Dr. Davidson's role, or the role of Plaintiff's forensic expert. A copy of this email is attached as EXHIBIT A, along with the string of associated emails.

8. At no time has there been any discussion between counsel about testimony from any of Plaintiff's treating doctors. Never has Defendant sought to depose any treating doctor other than Dr. Davidson, and that was for the reason related above.

9. Mr. Scully and I have had discussions about this case. We agreed the same are confidential. Based thereon, it is represented to the Court that if Plaintiff is denied the opportunity to designate a forensic expert physician Plaintiff's case will be substantially prejudiced.

I declare under penalty of perjury under the laws of the United States the foregoing is true and correct and that this affidavit was executed on this 15th day of July, 2008, at San Diego, California.

s/ Thomas R. Gill, Esq.
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